

Appln. No. 10/782,121

Amendment dated November 9, 2004

Reply to Office Action mailed September 8, 2004

### **REMARKS**

Reconsideration is respectfully requested.

Claims 1, 2 and 4 through 9 remain in this application. Claim 3 has been cancelled. Claims 10 and 11 have been added.

The Examiner's rejections will be considered in the order of their occurrence in the Office Action.

#### **Paragraph 1 of the Office Action**

The drawings have been objected to.

Submitted under separate cover and addressed to the Examiner is applicant's proposed amendment of the drawing. Specifically, in Figure 1 of the drawings as originally filed, reference number "10" was added.

In light of the proposed drawing amendment, it is therefore submitted that the objection to the drawings as originally filed has been overcome, and withdrawal of the objection to the drawings is respectfully requested.

#### **Paragraphs 2 and 3 of the Office Action**

Claims 1-9 have been rejected under 35 U.S.C. §112 (second paragraph) as being indefinite.

The above amendments to the claims are believed to clarify the requirements of the rejected claims, especially the particular points identified in the Office Action.

Withdrawal of the §112 rejection of claims 1-9 is therefore respectfully requested.

#### **Paragraphs 4 and 5 of the Office Action**

Claims 1 and 3-9 have been rejected under 35 U.S.C. §102(b) as being anticipated by Reynolds.

It is submitted that Reynolds reference does not disclose, teach or suggest "a first fastening member coupled to said collar member along a top

Appln. No. 10/782,121

Amendment dated November 9, 2004

Reply to Office Action mailed September 8, 2004

edge of said collar member such that said top edge of said collar member extends between an interior face and an exterior face of said collar member” and “a complimentary second fastening member coupled to said helmet for fastening said top edge of said collar member to said helmet such that said collar member is substantially aligned with said base portion of said helmet to permit liquid on the outside of said helmet to flow onto said collar member”. The Reynolds reference teaches a protective collar that fails to teach the first fastening member couple to the top edge of the collar which extends between the interior face and exterior face of the collar member allowing the collar member to be substantially aligned with the base portion of the helmet to allow liquid on the outside of the helmet to flow from the helmet to the exterior face of the collar member as claimed by the applicant. The Reynolds reference discloses a protective collar with the loop pile fasteners coupled to the interior face of the collar and is coupled to the exterior face of the helmet whereby a portion of the collar extends along a portion of the outer face of the helmet which fails to meet the requirements of the applicant’s claims. Therefore, it is submitted that the Reynolds reference would not lead one to anticipate the combination of features as claimed by the applicant.

Claims 4 through 9 are dependent upon claim 1, particularly as amended, and therefore incorporate the requirements of claim 1. Thus, claims 4 through 9 are also believed to be allowable over the cited reference.

Claim 3 has been cancelled.

Withdrawal of the §102(b) rejection of claims 1 and 3-9 is therefore respectfully requested.

**Paragraphs 6 and 7 of the Office Action**

Claim 2 has been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Reynolds in view of Perlinger.

Appln. No. 10/782,121

Amendment dated November 9, 2004

Reply to Office Action mailed September 8, 2004

It is submitted that the combination of Reynolds with Perlinger is not suggested by the prior art, and even if such a combination were to be made, one would not be led to the combination of features recited in applicants' claims. In particular, the references do not disclose, teach or suggest "a first fastening member coupled to said collar member along a top edge of said collar member such that said top edge of said collar member extends between an interior face and an exterior face of said collar member" and "a complimentary second fastening member coupled to said helmet for fastening said top edge of said collar member to said helmet such that said collar member is substantially aligned with said base portion of said helmet to permit liquid on the outside of said helmet to flow onto said collar member". As discussed above, the Reynolds reference fails to teach the first fastening member couple to the top edge of the collar which extends between the interior face and exterior face of the collar member allowing the collar member to be substantially aligned with the base portion of the helmet to allow liquid on the outside of the helmet to flow from the helmet to the exterior face of the collar member as claimed by the applicant. The Perlinger reference teaches a helmet closure that fails to teach the first fastening member couple to the top edge of the collar which extends between the interior face and exterior face of the collar member allowing the collar member to be substantially aligned with the base portion of the helmet to allow liquid on the outside of the helmet to flow from the helmet to the exterior face of the collar member as claimed by the applicant. It is also submitted that the mere fact that one may argue that the prior art is capable of being modified to achieve a claimed structure does not by itself make the claimed structure obvious--there must be a motivation provided by the prior art, and that motivation is totally lacking in the reference.

The examiner finds the claimed shape would have been obvious urging that (our emphasis) "it is obvious for one skilled in the art to form each hook base of any desired shape \*\*\* since *this is within the capabilities of such a person.*" Thus, the examiner equates that which is within the capabilities of one skilled in the art with obviousness.

Appln. No. 10/782,121

Amendment dated November 9, 2004

Reply to Office Action mailed September 8, 2004

Such is not the law. There is nothing in the statutes or the case law which makes "that which is within the capabilities of one skilled in the art" synonymous with obviousness.

The examiner provides no reason why, absent the instant disclosure, one of ordinary skill in the art would be motivated to change the shape of the coil hooks of Hancock or the German patent and we can conceive of no reason.

Ex parte Gerlach and Woerner, 212 USPQ 471 (PTO Bd. App. 1980) (emphasis in original).

Therefore, it is submitted that the combination of the Reynolds reference with the Perlinger reference would not lead one to the combination of features as claimed by the applicant.

Claim 2 is dependent upon claim 1, particularly as amended, and therefore incorporates the requirements of claim 1. Thus, claim 2 is also believed to be allowable over the cited reference.

Withdrawal of the §103(a) rejection of claim 2 is therefore respectfully requested.

#### New Claims

New claims 10 and 11 have been added to vary the scope of the claims and clarify the present invention. All limitations are supported by the original disclosure including the specification, drawings and original claims. Claim 11 incorporates the limitations of amended claim 1 and claims 4 through 9 and by the incorporation of the amended limitations of claim 1 and as discussed above is believed to allowable. Claim 11 incorporates the limitations of claim 2 and is dependent on claim 10. Therefore, no new matter has been added. The new claims are believed to be allowable.

Appln. No. 10/782,121

Amendment dated November 9, 2004

Reply to Office Action mailed September 8, 2004

**CONCLUSION**

In light of the foregoing amendments and remarks, early reconsideration and allowance of this application are most courteously solicited.

Respectfully submitted,

LEONARD & PROEHL, Prof. L.L.C.

By 

Date: 11/12/04

Robert K. Huck (Reg. No. 45,761)

LEONARD & PROEHL, Prof. L.L.C.

Customer Number 40158

3500 South First Avenue Circle, Suite 250

Sioux Falls, SD 57105-5807

(605)339-2028 FAX (605)336-1931